

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

HAOYANG YU, *et al.*

No. 19-cr-10195-WGY

**DEFENDANTS' SUPPLEMENTAL SUBMISSION
REGARDING PROPOSED WIRE FRAUD INSTRUCTIONS**

At the charge conference, earlier today, the Court indicated its intention to summarize the prosecution's wire fraud theory – that is, Defendants Haoyang Yu and Tricon MMIC, LLC, engaged in a fraud scheme to obtain ADI's confidential information and, then, go on to use or “monetize” that information to enrich themselves.

That theory, for reasons that the defense has previously explained, is legally erroneous and stretches the meaning of wire fraud far beyond the bounds of an already sweeping criminal statute. In short, wire fraud, as defined by 18 U.S.C. § 1343, criminalizes schemes to obtain property, without regard for how such property may be later used (or whether it is ever used at all). The crime is complete when the subject “property” is obtained. But, here, the charged wires have nothing to do with the “obtaining” of ADI's property.

Nevertheless, if the Court remains inclined to permit the prosecution to proceed on that theory, the defense requests that the Court make clear to the jury that its task is two-fold: the jury must decide (1) whether the prosecution has proven beyond a reasonable doubt the facts underlying its theory, as alleged in the indictment, and also (2) whether those facts, if proven, constitute wire fraud, as the Court will define and explain the elements that offense.

In other words, the Court should make clear in its final instructions to the jury that its

description of the prosecution's wire fraud "theory" is not meant to suggest that the "theory," even if proven, meets the elements of the wire fraud statute.

Respectfully submitted,

**HAOYANG YU and
TRICON MMIC, LLC**

by their attorneys,

/s/ Daniel N. Marx

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on May 24, 2022.

/s/ Daniel N. Marx